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REVIEW OF PRIORITY THEMES

Arrangements for convening an intergovernmental expert group to examine practical recommendations for the further development and promotion of mechanisms of international cooperation, including the United Nations model treaties on international cooperation in criminal matters, and for the development of model legislation on extradition and related forms of international cooperation

Note by the Secretary-General

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INTRODUCTION

1. Pursuant to Economic and Social Council resolutions 1993/32 of 27 July 1993 and 1994/19, section II, of 25 July 1994, a one-day workshop entitled "Extradition and international cooperation: exchange of national experiences and implementation of extradition principles in national legislation" was organized during the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders by the Government of the United States of America and the Crime Prevention and Criminal Justice Branch of the Secretariat, in cooperation with the International Association of Penal Law. Drawing on a background paper prepared by the Secretariat (A/CONF.169/8), the workshop examined different approaches to establishing extradition relationships between States, including the experience of States in implementing extradition by means of executive decisions supported by domestic legislation and bilateral, regional and multilateral agreements. During the workshop, in the context of a discussion on possible follow-up, the International Association of Penal Law offered to act as host to an intergovernmental expert meeting to be held in the facilities of the International Institute of Higher Studies in Criminal Sciences at Siracusa, Italy, under the auspices of the Crime Prevention and Criminal Justice Branch, to examine practical recommendations for the further development and promotion of mechanisms of international cooperation (A/CONF.169/16, paras. 273 and 286).

2. The Ninth Congress, in its resolution 2, entitled "International cooperation and practical assistance for strengthening the rule of law: development of United Nations model instruments", urged the Commission on Crime Prevention and Criminal Justice to consider, subject to the availability of extrabudgetary funds, the convening of an intergovernmental expert group to examine practical recommendations for the further development and promotion of mechanisms of international cooperation, including the United Nations model treaties on international cooperation in criminal matters, as well as for the development of model legislation on extradition and related forms of international cooperation in criminal matters. The Ninth Congress also made recommendations on the terms of reference of this expert group, in the light of the discussion of the above-mentioned workshop on extradition (A/CONF.169/16, para. 1).

3. On the recommendation of the Commission on Crime Prevention and Criminal Justice at its fourth session, the Economic and Social Council adopted resolution 1995/27 of 24 July 1995, on the implementation of the resolutions and recommendations of the Ninth Congress. In section I of that resolution, the Council requested the Secretary-General to convene, utilizing extrabudgetary funds already offered for that purpose, and in accordance with the principle of equitable geographical distribution, a meeting of the intergovernmental expert group. In addition, the Council recommended that the expert group should, in the light of the discussion at the workshop held during the Ninth Congress, explore ways and means of increasing the efficiency of extradition and related mechanisms of international cooperation in criminal matters, having due regard to the rule of law and the protection of human rights, including where appropriate such measures as: (a) the provision of technical assistance in the development of bilateral and multilateral agreements based on the United Nations model treaties and other sources; and (b) the drafting of model legislation or agreements on international cooperation in criminal matters, alternative or complementary articles for existing model treaties, and articles for possible model multilateral instruments. The Council also recommended that a report on the convening of the expert group should be submitted to the Commission at its fifth session.

4. The present note contains information on the action taken by the Secretariat to convene the intergovernmental expert group, as well as proposals for consideration by the Commission on the work of the expert group and follow-up activities regarding the implementation of Ninth Congress resolution 2 and Council resolution 1995/27.

I. ACTION TO CONVENE THE INTERGOVERNMENTAL EXPERT GROUP

5. The International Association of Penal Law offered to make available the extrabudgetary resources necessary for convening the intergovernmental expert group. That offer was referred to by the Council in its resolution 1995/27, section I. The President of the International Association of Penal Law and of the International Institute of Higher Studies in Criminal Sciences reiterated that offer in a communication dated 18 October 1995 to the Chief of the Crime Prevention and Criminal Justice Branch, suggesting that the meeting of the expert group should take place at Siracusa, Italy, in the facilities of the Institute.

6. With a view to giving effect to the request for a report to the Commission at its fifth session, the Crime Prevention and Criminal Justice Division* undertook informal consultations in December 1995 with the President of the Institute, who was also representing the International Association of Penal Law, with the participation of representatives of a number of Member States that had expressed or demonstrated a keen interest in the matter during both the Ninth Congress and the fourth session of the Commission. The United Nations Interregional Crime and Justice Research Institute also participated in the consultations. The Crime Prevention and Criminal Justice Division welcomed the opportunity to discuss both substantive and organizational requirements and arrangements for convening the intergovernmental expert group at a time that would enable the report of the meeting of the expert group to be submitted to the Commission at its fifth session.

7. The issues that needed to be discussed included the size and composition of the expert group and its terms of reference, based on Council resolution 1995/27 and Ninth Congress resolution 2. Another one of the key matters involved was the determination of whether the resources identified by the International Institute of Higher Studies in Criminal Sciences and the International Association of Penal Law for convening the expert group were sufficient for ensuring adequate preparations for and servicing of the meeting, as well as the participation of experts from developing countries.

8. Regarding the composition of the expert group, the Crime Prevention and Criminal Justice Division emphasized the need to ensure that assistance would be made available to experts from developing countries and countries with economies in transition, by way of defraying travel and subsistence costs. Past experience had shown that, in the absence of such assistance, the participation of such countries tended to be extremely limited or, in many cases, impossible. In addition to the need to comply with the Council's request to the Secretary-General to apply the principle of equitable geographical distribution, the work of the expert group would greatly benefit from the broad participation and from the experiences of developing countries and countries with economies in transition. Furthermore, the recommendations that the expert group had been mandated to make to the Commission would not adequately cover all pertinent issues if the concerns of developing countries and countries with economies in transition were not reflected.

9. The Division also stressed the need to provide simultaneous interpretation in at least three languages (English, French and Spanish) during the meeting of the expert group. That would permit experts to fully participate in and contribute to the discussion, particularly taking into consideration the technical nature of such a discussion and the issues associated with extradition practice.

10. The President of the International Institute of Higher Studies in Criminal Sciences indicated that those issues would be taken into serious consideration in planning for the meeting of the expert group. The original intention of the Institute, in keeping with the practice followed by it in the organization of meetings or training courses, was to cover subsistence costs for participants from developing countries. It was, therefore, agreed that the Institute and the International Association of Penal Law would make every effort to identify

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*The Crime Prevention and Criminal Justice Branch was upgraded into a division, pursuant to General Assembly resolution 50/214 of 23 December 1995.

the resources required to defray reasonable travel costs for up to 10 experts from developing countries and countries with economies in transition and to provide interpretation in English, French and Spanish. During the consultations, the Crime Prevention and Criminal Justice Division appealed to the Member States participating in the consultations to assist, through voluntary contributions, in the organization and servicing of the expert group and in providing adequate follow-up to its work.

11. All participants in the consultations were interested in ensuring that the report to the Commission would facilitate follow-up action to Economic and Social Council resolution 1995/27, section I. It was stressed that it was also important to ensure that the technical cooperation value of the workshop on extradition, held during the Ninth Congress, was maintained and maximized, in accordance with the wishes of Member States with regard to the new format of the quinquennial congresses on the prevention of crime and the treatment of offenders, and that the related emphasis was placed on the organization of workshops, as expressed in General Assembly resolution 46/152 and Council resolutions 1993/32 and 1994/19, section II. In the consultations undertaken by the Division, it was concluded that the expert group should be composed of no more than 25 persons. That would be sufficient to ensure the participation of experts from all regions while being conducive to substantive discussion, as well as the exchange of information and knowledge. The possibility of arriving at conclusions and recommendations that would constitute progress in improving international cooperation in criminal matters would thus be increased. The limited size of the expert group would also make it possible for it to contribute to the enhancement of the technical cooperation value of follow-up to the workshop held during the Ninth Congress. The Division was of the view that, in addition to its mandated functions, the expert group should devote its attention to the development of a framework for training manuals on extradition practice, which could be used in training courses for criminal justice personnel from developing countries and countries with economies in transition. The President of the International Institute of Higher Studies in Criminal Sciences had stated that it was the intention of the Institute to host and organize such training courses in cooperation with the Division.

12. During the informal consultations, the Crime Prevention and Criminal Justice Division drew attention to the fact that Council resolution 1995/27, section I, and Ninth Congress resolution 2 reflected the preference of Member States for an integrated approach to the overall issue of instruments and modalities of international cooperation. It was, however, evident that one expert group, meeting for a limited period of time, was hardly in a position to arrive at concrete recommendations covering the broad range of issues associated with all forms of international cooperation in criminal matters. That conclusion was particularly reinforced by the realization of the constantly and rapidly changing needs of States faced with new and sophisticated forms of criminal activity. It was, therefore, agreed that the work of the expert group would be more productive if it would concentrate on extradition, a vast subject in itself. Other international cooperation mechanisms, such as mutual assistance in criminal matters and transfer of proceedings, would need to be dealt with separately. It was agreed that the International Institute of Higher Studies in Criminal Sciences, the International Association of Penal Law and interested Member States would make every effort to identify the resources necessary for the convening of a subsequent meeting of an expert group to deal with those matters and to arrive at recommendations pursuant to Council resolution 1995/27, section I.

13. Agreement was reached on the fact that the most practical means of implementing Council resolution 1995/27, section I, and Ninth Congress resolution 2 would be a four-day meeting of the expert group. The first two and one half days would be devoted to defining common problems in extradition practice, as well as identifying and recommending ways to improve such practice, while having due regard for the rule of law and the protection of human rights. That part of the meeting would also include a discussion on the drafting of model legislation or agreements on extradition, alternative or complementary articles of the Model Treaty on Extradition (General Assembly resolution 45/116, annex, of 14 December 1990) and articles for possible model multilateral instruments. During the next day, the expert group would concentrate on training and technical assistance mechanisms and materials to improve the level of extradition practice and to implement the recommendations reached by the group. The final one half of a day would be used to formulate and agree upon the report of the expert group, which would be prepared

by the Crime Prevention and Criminal Justice Division and would be submitted to the Commission at its sixth session for its consideration and action.

14. It was agreed that, to ensure a well-focused discussion, the experts would be requested to prepare and bring to the meeting presentations of problems encountered by States in extradition practice, such as treaty negotiations, provisional arrest procedures, documentation, standards of evidence, double criminality and the rule of specialty. Such presentations would serve as a stimulus for more substantive and productive discussion on problems faced in extradition practice by States in the various regions and would facilitate the drawing up of recommendations for improvements.

15. The Crime Prevention and Criminal Justice Division considered the convening of the expert group to be one of the activities of the United Nations crime prevention and criminal justice programme that would be best carried out in cooperation with the United Nations Interregional Crime and Justice Research Institute and the other institutes comprising the programme network, particularly in view of their productive involvement in the organization and convening of the workshops during the Ninth Congress. It was, therefore, decided that the institutes should continue to be involved and, for that purpose, would be requested by the United Nations Interregional Crime and Justice Research Institute to provide information on experts in extradition matters in their regions, in order to facilitate the selection process to be carried out by the Division.

16. In the informal consultations, the Crime Prevention and Criminal Justice Division drew attention to the fact that the Council, in its resolution 1995/27, section I, had recommended that a report on the convening of the expert group should be submitted to the Commission at its fifth session. Consequently, the Division urged the International Institute of Higher Studies in Criminal Sciences and the other participants of the consultations to facilitate the convening of the expert group prior to the fifth session of the Commission. In the ensuing discussion, the general view was that some of the prerequisites for ensuring a high-quality product for consideration by the Commission could not be met in the time available. Furthermore, it became evident that certain issues raised by the Division, particularly regarding the availability of the resources necessary to facilitate the participation of experts from developing countries and countries with economies in transition, required further study and clarification. The selection and invitation process would presuppose such clarification. Consequently, in view of the desirability of assembling a group of experts of high calibre whose busy schedules would require ample advance notice and because of the existence of a number of international events that would affect the capacity of the International Institute of Higher Studies in Criminal Sciences to host the meeting, it was concluded that convening the expert group prior to the fifth session of the Commission was not feasible. It was, therefore, decided that the expert group should be convened after the fifth session of the Commission, possibly early in July 1996, with a view to submitting the report of the expert group to the Commission at its sixth session.

II. OTHER RELEVANT MATTERS

17. During its fourth world conference on crime prevention and criminal justice, held at Bangkok from 15 to 17 November 1995, the Asia Crime Prevention Foundation decided, *inter alia*, to establish a working group with the aim of studying the issues of extradition and mutual legal assistance in Asia and the Pacific, taking into account other experiences at the regional and international levels. The working group is to focus its attention on: (a) reviewing the existing bilateral extradition and mutual assistance arrangements in the region; (b) assessing the adequacy of existing legislation and regulations and devising more modern and practical arrangements that take into account the emerging requirements of the countries in the region, as well as recent developments in international criminal law; and (c) examining the viability of drafting a convention on extradition and mutual assistance in criminal matters for Asia and the Pacific, in order to achieve more advanced and successful practice in that field, bearing in mind the various United Nations norms, guidelines and model treaties pertaining to that issue. The Asia and Crime Prevention Foundation requested the Asia

and Far East Institute for the Prevention of Crime and the Treatment of Offenders to extend its substantive support and cooperation to enable the working group to fulfil its task. The working group is to present its report to the fifth world conference on crime prevention and criminal justice, which is to be held towards the end of 1996. To assist the working group in its work, a questionnaire eliciting information on extradition and mutual assistance practice has been developed and sent to the countries in the region.

18. With the invaluable assistance of the Attorney-General's Department of Australia, the Department of Justice of Canada, the United Nations Interregional Crime and Justice Research Institute and the International Institute of Higher Studies in Criminal Sciences, the Crime Prevention and Criminal Justice Division had prepared draft manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, of 14 December 1990). The draft manuals had been presented for comments to the Ad Hoc Expert Group Meeting on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993, and to the Commonwealth Secretariat's Conference on Mutual Legal Assistance, held at Oxford, United Kingdom of Great Britain and Northern Ireland, from 5 to 9 September 1994, and co-sponsored by the United Nations International Drug Control Programme and the United Nations Interregional Crime and Justice Research Institute. After incorporating the comments received from the participants at those events and the valuable input of many Governments and experts from around the world, the manuals were finalized and published in the *International Review of Criminal Policy* (Nos. 45 and 46).[1] The manuals, which were prepared to assist Member States in the use and application of the two model treaties, include a commentary under each of their articles that also deals with legislation that might be required to put the relevant provision into effect. The Division has received information regarding increased reliance by Member States on the model treaties in the course of bilateral and multilateral negotiations. That reliance has also been evidenced by an increase in requests from Member States to the Division for advisory services and other practical assistance regarding bilateral or multilateral cooperation in criminal matters. In this connection, it should be recalled that the Economic Community of West African States referred to the model treaties when preparing its Convention on Mutual Assistance in Criminal Matters and received direct technical assistance from the Division in the development of that Convention.

19. The report of the Ad Hoc Expert Group Meeting on Implementing Legislation to Foster Reliance on Model Treaties (E/CN.15/1994/4/Add.1), submitted to the Commission at its third session, included detailed recommendations that may serve as useful background for the work of the intergovernmental expert group to be convened in accordance with Council resolution 1995/27, section I. The report will be available to the Commission at its fifth session.

III. ACTION REQUIRED OF THE COMMISSION

20. The Crime Prevention and Criminal Justice Division will continue its efforts to clarify the above-mentioned issues, a prerequisite for convening the intergovernmental expert group. One of the more predominant issues remains the availability of extrabudgetary resources to permit the participation of experts from developing countries and countries with economies in transition and the adequate servicing of the meeting. In view of the agreement reached during the informal consultations to have the expert group concentrate on extradition, another issue requiring clarification is whether extrabudgetary resources will be available to permit the convening of another expert group meeting, to deal with mutual assistance in criminal matters and other forms of international cooperation, in order to fully comply with Council resolution 1995/27, section I, and Ninth Congress resolution 2.

21. It is important to ensure appropriate follow-up to the workshop on extradition and international cooperation held during the Ninth Congress by emphasizing and maximizing its technical cooperation value. The expert group could make a useful contribution in this direction by developing outlines of training manuals that could be prepared and used in training courses for criminal justice personnel from developing

countries and countries with economies in transition. Such training manuals could be structured for different groups of criminal justice personnel or officials involved in the negotiation of bilateral or multilateral treaties or charged with the application of such treaties. The manuals could supplement the manuals already prepared and published by the Division, forming a comprehensive package of training materials, including guidelines or models for implementing legislation. The elaboration of the training manuals and the organization of training courses would, however, require extrabudgetary resources.

22. The Commission may wish to encourage interested Member States to make voluntary contributions that would enable the Division to convene the intergovernmental expert group and fully implement Council resolution 1995/27, section I, as well as to elaborate the above-mentioned training manuals and organize training courses on improvements of practice in extradition and other forms of international cooperation in criminal matters.

23. The Commission may also wish to review the recommendations of the Ad Hoc Expert Group Meeting on Implementing Legislation to Foster Reliance on Model Treaties in the light of (a) the discussion that took place at the workshop on extradition and international cooperation that was held during the Ninth Congress and (b) Council resolution 1995/27, section I.

24. In view of the intergovernmental nature of the expert group, pursuant to Council resolution 1995/27, section I, the Commission may wish to encourage interested Member States to nominate experts with a view to facilitating the work of the Crime Prevention and Criminal Justice Division in making a final selection of the members of the group.

25. The work to be carried out by the Asia Crime Prevention Foundation working group on extradition and mutual legal assistance, as well as the information on these matters collected from countries in Asia and the Pacific, would be useful to the expert group in carrying out its work and to the Crime Prevention and Criminal Justice Division in collecting and disseminating information. The Commission may wish to encourage the Asia Crime Prevention Foundation to work closely with the Division in this matter. In addition, the Commission may wish to promote coordination of the activities of the Asia Crime Prevention Foundation related to extradition and mutual legal assistance with the activities of the expert group, which might be better achieved by encouraging their participation in each other's meetings.

Notes

[1]United Nations publication, Sales No. E.96.IV.2.